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UNITED STATES DEPARTMENT OF COMMERCE
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Paper No. 24

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In re Application of Moura et al. :
Application No. 08/697,080 :
Filed: August 20, 1996 :
Attorney Docket No. 225013 :

SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS

ON PETITION

This is a decision on the petition filed January 20, 1998, which is being treated as a conditional petition under 37 CFR 1.137(b) to revive the above-identified application.¹

The petition is GRANTED.

Note that in DH Technology v. Synergystex International, Inc., 937 F. Supp. 902, 40 USPQ2d 1754 (N.D. Cal. 1996), the District Court for the Northern District of California held that the submission of the full issue fee under 37 CFR 1.28(c) must also meet the requirements of 37 CFR 317. The requirements for acceptance under 37 CFR 1.317 are similar to the provisions for revival under 37 CFR 1.137 and the reinstatement proceedings under 37 CFR 1.378. DH Technology is currently under appeal to the Court of Appeals for the Federal Circuit (CAFC).

Assuming, *arguendo*, that fee deficiencies payment under 37 CFR 1.28(c) must also meet the requirements for the respective provision of 37 CFR 1.137, which was amended effective December 1, 1997 to include the provisions of former §§ 1.139, 1.155, 1.316, and 1.317 (cf. DH Technology v. Synergystex International, Inc., 937 F. Supp. 902, 40 USPQ2d 1754 (N.D. Cal. 1996)), the instant petition under 37 CFR 1.137(b) is appropriately filed.

¹ The petition is styled as conditional in that the Patent and Trademark Office (PTO) does not currently regard the above-identified application as abandoned, and petitioners are not viewed as conceding that the above-identified application is abandoned.

Application No. 08/697,080

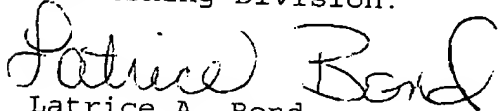
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Specifically, the failure to submit full issue fee during the filing and prosecution of the above-identified application could have resulted in abandonment no earlier than **, the day after the fee was due to the Office action of **. Therefore, regardless of the ultimate disposition of DH Technology by the CAFC, the granting of the instant petition under 37 CFR 1.137(b) is adequate to restore or maintain pendency of the above-identified application.

This petition was filed under the revival rules in effect as of December 1, 1997. *Note Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131 (October 10, 1997), 1203 Off. Gaz. Patent Office 63 (October 21, 1997).* Therefore, the statement of unintentional delay does not comply with the provisions of 37 CFR 1.137(b)(3) in effect as of December 1, 1997. However, the statement presented will be accepted and construed as meaning that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b), was unintentional." If this is an incorrect interpretation in view of the new rules, petitioner is required to provide a statement to that effect.

Inquiries with regard to this decision should be directed to the undersigned at (703) 308-6911.

The above-identified application is being forwarded to the Publishing Division.



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